

**Motor Carrier Group Chairman's Factual Report  
HWY-05-MH035**

**Attachment #24: DPS Language Policy**  
(3 Pages)

## TEXAS DEPARTMENT OF PUBLIC SAFETY INTEROFFICE MEMORANDUM

**To:** All Regional Commanders, HP, and CVE Captains      **Date:** 03/30/05  
**From:** R. K. Elliston, Chief, Texas Highway Patrol Division      **Division:** THP  
**Subject:** 49 CFR 391.11(b)(2) – English Language Requirement – Enforcement Policy

The Federal Motor Carrier Safety Regulations, in Part 391.11(b)(2), provide that a person is qualified to drive a commercial motor vehicle if he/she can read and speak the English language sufficient to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

This English language requirement was originally established by the Interstate Commerce Commission (ICC) in 1936. When promulgated at that time, the ICC explained that this regulation was not intended to be enforced at the roadside. The ICC specifically stated that it was the motor carrier employer's responsibility to evaluate the driver's proficiency in the English language as the employer was presumed to know what communication skills were necessary for the type of cargo handled, the route taken, and the public contact required (see 62 FR 45200 – 45201 issued August 26, 1997). In July 2003, the Federal Motor Carrier Safety Administration (FMCSA) again reviewed the English language requirements in Part 391.11(b)(2) and determined the following: "As written, the regulation sets forth the qualifications of drivers of CMV's to read and speak the English language and allows each motor carrier employer the flexibility to determine the extent of proficiency needed to enforce it. It provides carriers with the flexibility to individually determine whether a driver has communication skills and English fluency to operate safely on the highway" (see 68 FR 43889 – 43891). Clearly, the FMCSA continues to believe that this regulation is not intended to be enforced at roadside, but rather through the compliance review process with the employing motor carrier. Based on this FMCSA interpretation of Part 391.11(b)(2), the following enforcement policies will be in effect.

### **CMV's Operating in Interstate Commerce**

Neither custody arrests nor arrest citations should be initiated against a driver for a violation of 49 CFR 391.11(b)(2). If the driver has insufficient command of the English language **and** highway safety is compromised, then that driver may be issued a warning for violation of 49 CFR 391.11(b)(2) and placed out-of-service in accordance with the North American Standard Driver Out-of-Service Criteria that becomes effective on 04/01/05. DPS employees that place a driver out-of-service for violation of 49 CFR 391.11(b)(2) shall promptly notify their

first-line supervisor of such action. DPS employees shall also submit a Compliance Review Complaint Form to the Motor Carrier Bureau requesting that a compliance review be initiated against the employing motor carrier of the driver. If the Compliance Review determines non-compliance with 49 CFR 391.11(b)(2) by the employing motor carrier, then appropriate enforcement action may be initiated against the motor carrier by the Motor Carrier Bureau.

**CMV's Operating in Intrastate Commerce**

Title 37, Texas Administrative Code, §4.12(b)(5), provides that 49 CFR 391.11(b)(2) has not been adopted for intrastate drivers. Therefore, no enforcement or out-of-service action shall be initiated under Part 391.11(b)(2) for intrastate drivers. Compliance Reviews conducted on intrastate motor carriers shall not include any enforcement action for violations of 49 CFR 391.11(b)(2).

cc: Assistant Chief Lamar Beckworth, THP Division  
Inspection Dale St. John, OAI